

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 411 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No.
2. To be referred to the Reporter or not? No. :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No.
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? : NO
No.

MADHURI ISHWAR MEHTA

Versus

NAVJIVAN CO-OP.HOUSING SOCIETY LTD.

Appearance:

MR RJ OZA for Petitioners

MR JR NANAVATI for Respondent No. 1 and 2.

RESPONDENTS NO. 3 AND 4 SERVED.

MR JK PANDYA for Respondent No. 5.

RESPONDENTS NO. 6, 7 AND 8 SERVED.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 07/12/1999

ORAL JUDGEMENT

1. This petition has been filed for quashing and setting aside the judgment and order dated 28-2-1986 passed in Appeal No. 168/85 by the Gujarat State Cooperative Tribunal and the award dated 4-6-1985 passed by the Board of Nominees, Rajkot in Lavad Case No.

502/82 and also for a direction for restraining the respondent, their agents and servants from disturbing ownership and possession of the petitioners on plots no. 29 and 30 situated on Survey No. 266 in the outskirts of Wada in the city of Bhavnagar.

2. Learned counsel for the petitioner submitted that the dispute was referred u/s 96 of the Gujarat Cooperative Societies Act, 1961. The Board of Nominees was appointed u/s 96 of the Act.

3. On the date fixed the petitioners were not present and hence the Board of Nominees dismissed the proceedings on account of absence of the petitioners and insufficiency of the evidence and an amount of Rs.510/- was to be deposited by the petitioners in the case which was directed to be appropriated in the Government as the order was passed on merits. The Board of Nominees considered the evidence which was found insufficient and hence the appeal was available to the petitioners. Therefore, the petitioners filed Appeal No.168/85 before the Gujarat State Cooperative Tribunal, Ahmedabad. The Tribunal found that no affidavit or declaration was filed in support of the appeal and the Board of Nominees dismissed the proceedings on account of absence of the petitioners. Though the petitioners were able to show before the Tribunal that there cogent reasons for his absence. The Tribunal dismissed the appeal for want of sufficient evidence, with costs of Rs. 100/-/- to be paid to the other side.

4. Heard the learned counsel for the parties. It is pointed out by the learned counsel for the petitioners that the Board of Nominees dismissed the proceedings only on the ground that the petitioners were not present and the evidence was insufficient. Against that order the appeal was filed wherein the Tribunal found that no affidavit or declaration was filed by the petitioners in support of the appeal though it is not required under the regulation that the appeal should be presented along with the affidavit or declaration. The learned counsel for the petitioner submitted that the Tribunal has committed an error on the face of the record. He requested that the order of the Tribunal be set aside and the matter be sent back to the Tribunal where the petitioners will have an opportunity to file affidavit or declaration in support of the appeal. Learned counsel for the petitioners assure that there is sufficient evidence for proceeding with the matter before the Tribunal. However, he has submitted that the stage of leading the evidence has not arrived as the issues have to yet to be framed

and thereafter the evidence has to be recorded. Only the documentary evidence has been filed and that has been considered by both the authorities below and which has been found as insufficient by the Tribunal.

5. In the facts and circumstances of the case, it is clear that the appeal has not been decided on merits by the Tribunal and hence in the facts of the case the same requires to be heard on merits.

6. Accordingly, the petition is allowed in part and the order dated 28-2-1986 passed in Appeal No. 168/85 by the Gujarat State Cooperative Tribunal arising out of the award dated 4-6-1985 passed by the Board of Nominees, Rajkot in Lavad Case No. 502/82 is hereby quashed and set aside and the matter is remanded back to the Tribunal and the Tribunal is directed to decide matter afresh after giving reasonable opportunity of being heard to the parties including the petitioners to file affidavit or affirmation if required under the provisions of the law. Rule is made absolute to the aforesaid extent, with no order as to costs. Interim relief granted earlier stands vacated.

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/JVSatwara/